

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ram Kishore Vs. State of Raj.
(D.B. Criminal Appeal No.225/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 6-2-2002 in Sessions Case
No.37/2001 passed by Shri GiriRaj Prasad Gupta,
RHJS, Additional Sessions Judge (Fast Track) No.1
Jaipur City, Jaipur.

Date of Judgment:

July 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Biri Singh Sinsinwar] for the appellant.
Mr. Kamendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Kamla, the deceased in the instant case, appears to be a lady of easy virtue. Her character as projected by her own daughter Paras reminds us following lyric of a Maharashtra Prakrit Poet:-

“The woman has so trained her dog
That he welcomes her lover
But growls at her husband, bares his teeth
When that poor man returns from the field.”

On the fateful night finding Kamla in her bedroom with a stranger, her husband (appellant herein), stabbed her to death. He was put to trial before the learned Additional Sessions Judge (Fast Track) No.1, Jaipur City and was found guilty. Against the finding of conviction and sentence under

section 302 IPC to suffer imprisonment for life and fine, this appeal has been preferred by the appellant.

2. Having heard the rival submissions we notice that the the prosecution case is founded on the dying declaration of Kamla (Ex.P-3) wherein she stated that the appellant around 1.30 AM on September 3, 1995 inflicted knife blows on her person. Dying declaration Kamla stands corroborated by injury report (Ex.P-10) which reads thus:

1. Stab incised wound of size 1.5 x ½ cm x depth? Lt.side of front of neck
2. Stab incised wound of 2.5 x 1cm x depth?
3. Incised wound of ½ x ¼ x muscle deep Lt.side upper part of chest
4. Incise wound 1.5 x ¼ x skin deep
5. Abrasion of 1.5 x 1cm
6. Incised wound of 3 x ½ x depth muscle at Lt.arm
7. Incised wound 2.5 x 1cm x muscle deep at Lt.arm
8. Incised wound 1 x ½ x muscle deep at Lt.arm
9. Stab incised wound 3.5 x 1 x depth? At Lt.back lumber region
10. Incised wound 1 x ½ x skin deep at Lt.lateral.
11. Abrasion & Bruises of size 3x4cm to 2x3cm Lt.nipple
12. 2-3 Bruises of size 2x3 to 2cm Rt.nipple
13. Bruise of size 2.5 Lt.side infra clavicular
14. Incised wound of size 2.5 x 1.5 Lt.middle finger palmer aspect.

Dead body of Kamla was subjected to autopsy and as per Autopsy Report (Ex.P-5), the cause of death was shock and hemorrhage on account of injuries to vital organs.

3. Paras (Pw.12) daughter of deceased who was nine years of age was examined as eye witness of the incident by the prosecution. In her

examination in chief she stated as under:-

"रात को पापा घर आये व दरवाजा खटखटाया तब मैं जागी थी। मम्मी के पास कोई आदमी था जो पापा को धक्का देकर भागा। पापा ने पूछा कि यह कौन है तो मम्मी ने चाकू उठाकर कहा कि अभी बताती हूँ इस पर मेरे पापा पीछे हटे व जान बचाने की खातिर सब्जी काटने का चाकू उठाकर मेरी मम्मी के मारे।"

She further stated in her cross examination thus:-

"मेरे पापा आये तब मेरी मम्मी व एक दीगर आदमी एक ही बिस्तर पर सो रहे थे। वह आदमी धोती समेटता हुआ भागा था।"

Paras was not declared hostile by the prosecution. Her evidence therefore can be relied upon by the defence and it would bind the prosecution (vide Raja Ram Vs. State of Rajasthan (2005) SCC (Cri) 1050).

4. Fact situation of this case where the accused husband cut his wife after he discovered that she was having illicit intercourse with another person, is regarded under law as causing grave and sudden provocation to the accused husband and anything he did in consequence must be judged and weighed in that light. Large number of severe cut injuries found on the person of deceased, also support this fact that the husband acted under grave and sudden provocation. The offence committed by the accused appellant must be regarded as having been taken out of the category of murder, but would amount, therefore, only to culpable homicide not amounting to murder. The murder having been committed under grave and sudden provocation to which the Exception I to Section 300 IPC directly applies.

5. For these reasons, we partly allow the appeal and instead of section 302 we convict the appellant Ram Kishore under section 304 part I

IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer six months rigorous imprisonment.

The impugned judgment stands modified as indicated above.

(R.S.Chauhan),J.

(Shiv Kumar Sharma)J.

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